



## **Determination of Suspension or Debarment of John Seth Louthan**

## Determination of Suspension or Debarment of John Seth Louthan

Consideration of whether or not John Seth Louthan should be suspended or debarred from doing business with the South Florida Water Management District pursuant to Rule 40E-7, Part II, Florida Administrative Code.



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### **CHRONOLOGY**

- **Contract executed with John Seth Louthan effective Sept. 1, 2005 for 5 year lease on Allapattah Ranch Parcel B in Martin County.**
- **Issued Cure Notice for non-payment of rent Sept. 10, 2009 pursuant to Rule 40E-7.216 Florida Administrative Code.**
- **Rent remained unpaid past 30-day cure period.**
- **Total amount due to District \$174,278.48 (included 5% late fee)**



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- District received partial payment \$120,144.86 Oct. 29, 2009 from Bank. Balance remaining on Letter of Credit insufficient to cover outstanding rent.
- Termination for Default sent certified mail Oct. 29, 2009 pursuant to Rule 40E-7.217 Florida Administrative Code.
- Governing Board authorized staff “to file suit...take all appropriate action, including authority to settle the matter...” on Dec. 10, 2009.
- Mar. 16, 2010 Louthan executed a lease amendment assigning lease to Travis Brown, with District’s permission. District was made whole.



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Suspension Rule requires Governing Board to determine whether or not to suspend or debar a vendor by considering the following factors in Section 40E-7.218 Florida Administrative Code.



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## Suspension Factor Checklist

	Suspension Factor	Yes/No	Comments
<u>Monetary</u>			
1	Was there an economic impact of the material breach to the District?	No	Collected payment from Lessee's letter of credit and additional monies owed by new Lessee. No outstanding amounts currently owed.
<u>Delay &amp; Ramifications</u>			
2	Did the breach cause or will cause a delay in the completion of a District project?	No	
3	Did the breach lead to a substantial delay?	No	
4	Did the delay impacted legislative deadlines?	No	
<u>Misconduct &amp; Gravity</u>			
5	Was there willful or gross misconduct?	No	
6	Was there a commission of fraud or a criminal offense?	No	
7	Was there a lack of business integrity or business honesty?	No	Lessee called and agreed to pay past due rent on Tuesday Oct. 13, 2009. Rent remained unpaid past 30 day cure period.
8	Did the contractor knowingly do business with a suspended contracting entity?	No	
9	Did the breach involve a violation of the District's SBE Contracting Rule.	No	



## Suspension Factor Checklist

	Suspension Factor	Yes/No	Comments
<u>Violation of Law</u>			
10	Did the Contractor violate Federal or State antitrust statutes?	No	
11	Was there falsification or destruction of records?	No	
12	Was there embezzlement, theft, forgery, bribery, falsification of statements, etc?	No	
13	Did the breach involve discrimination?	No	
<u>Number of Offenses</u>			
14	Has the contractor materially breached a contract with the District in the past and if so, how many times since the effective date of this rule?	No	
15	Was the contractor on another Federal or State suspension or debarment list at the time it breached its District contract?	No	
16	How many times has the contractor defaulted?	2	Unpaid 2008 property taxes and 2009 unpaid rent; Three previous Cure Notices sent to Lessee for non-payment of rent 2006, 2007 and 2008.
<u>Mitigation</u>			
17	Can the contractor pay the re-procurement costs in a timely manner?	N/A	Lease assigned - not reprocured

Procurement Director's Recommendation:

No suspension. Place default letter in file for three year period.

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Staff Recommendation – Staff recommends that John Seth Louthan not be suspended or debarred, and a copy of the termination letter be kept in his file for a five year period.

